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1942. **File No.** Power Alc-Petrol II/42

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Legal **DEPARTMENT**

B **BRANCH**

Subject:—

P.M.S/E

Rules and Notifications

under

The Power Alcohol and

Petroleum Act.

File No. Power - Alc - Petrol II/42

3td. Sectt. Slip 24 B a.

510/B

Office of the R.L.A.

Clause (o) of sub-section (2) of section 23 of the prop ~~posed~~ power Alchol and Petroleum Act given powers to the Government to make ~~offic~~ rules providing for the powers and duties to be exercised and performed by officers of the Excise Depa rtment and of any other Department authorised in that behalf while acting under the Act. The co-Commissioner of Excise has prpoosed draft notification as at page 33-35 ante to be issued under clause (o) of sub-section (2) of section 23 investing certain officers with the powers conferred by certain section e.g. section 13 and 14. On this proposal the question raised for the R.L.A's consideration is whether notifications under individual section 13, 14 15 and 22 would not be necessary.

2. The Commissioner of Excise does not appear to have correctly interpreted clause (o) of sub-secion(2) of section 23 of the proposed Act. Under this caluse Government can make rules-providing for the powers and duties to be exercised and performed by the officer of the Excise Department and of any other department who are authorise in that behalf. Under this clause Government cannot issue a notification authorising any such officers to exercise the powers conferred by any provision of the Act. Such a notification will have to be issued under the substantive provision of the Act which gives powers to Government to issue notification e.g. section 13. After such a notification is issued the officer concerned will exercise the powers conferred by the relevant section.The rules which may be made under clause (o) of sub-section (2) of section 23 will further provide for the powers and duties to be exercised and performed by such officer while acting under the Act. They will be in a sense supplementary to the powers conferred on hi by the substantive section. Notifications under individual section e.g. section 13 and 14 will therefore be necessary.

3. As regards section 16 of the proposed Act, it refers to Magistrates. A separate notificationwill be necessary under this section. Section 22 gives power to the Provincial Government in the case of the Commissioner and to the Commissioner in the case of the other officer to issue orders in accordance with which the

Commissioner and the other officers shall respectively exercise the powers and perform the duties conferrred and imposed on them by or under the Act. No notification is necessary under this section but if it is desired to issue one a separate notification under the said section will be necessary.

Sd/- P.N. Moos 2/11

Remembrancer of Legal Affairs.

U.R. to R.D., No. 486-Confl, dated the 2nd November 1942

Mr/1/5

C O N T E N T S

Legal Department File No Power Alc. Petrol II/42

Sr. No.	Compilation No.	Subject	Pages
		Powers Alcohol and Petroleum Act, 1942	
1.	R.I. No.412-Confl dt. 27-10-42	SS. 13.14.16 and 22 Whether separate Notification necessary ~~very~~ under individual sections; and Whether it is necessary to specify the names of districts in such Notifications	1-2
2.	U.R.R.D. No486-Confl dt. 2.11.42	ss. 13.14.16 and 22 Notifications under individual section	3-4

Mr/1/5
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Comd
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Submitted with reference to the draft notifi-

cation on page 33.35 ante and paras 2 and 8 of Secy., R.D note dated 26th instant at pp. 117-119 ante.

2. A copy of the Bombay Power Alchol and Petroleum Bill, 1942 as finally approved by Government will be found at pp.121-131 ante. The R.L.A. is requested to advise whether separate notifications are necessary under individual secs. 13,14,16 and 22 of the proposed Act and whether it is necessary to specify the names of districts in such notifications.

3. Sec. 13(1) of the Bombay Power Alcohol and Petroleum Act, 1942, requires that the officer should be authorised in that behalf by notification in the Official Gazette. It is therefore obligatory under this section to issue a notification in the Gazette, for authorizing any officer to exercise the powers conferred by the said section. Sec.14 does not require that the officer should be authorised by notification in the official Gazette. Any officer can therefore be authroised by executive orders to exercise the powers conferred by this section. There is, however, no legal objection to authorise officers under this section also by notification in the Official Gazette. Sec. 23(2) (6) has no application in cases of authorisations falling under section 13(1) or sec. 14.

4. Although sec. 16 does not require that a Magistrate of the secnd class to be specially empowered to try offences punishable under the Act should be so empowered by notification in the Official Gazette, it would be desirable to issue a notification is such case for the information of the public (cf. sec. 39) of the

Code of Criminal Procedure, 1898).

5. Section 22 lays down that all officers shall exercise the powers and perform the duties confereed and imposed on them by or under this Act in accordance with such orders etc.-as the Provincial Government in the case of the Commissioner and in the case of other officers, the Provincial Government or the Commissioner may from time to time make. There is no statutory obligation to publish the orders made by Government or the Commissioner in the Official Gazette.

6. In none of the above cases falling under sections 13(1),14,16 and 22 it will be necessary to specify the district because of the provisions of suv-section (2) of section 2.

Id/-
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S.S.

But separate notifications or orders under each individual notification will be required, as stated by Secy., R.D. in para 2 of his note dated 26.19.1942 on p 117 ante.

2. If the above view is approved by the D.S., R.D., may be informed as in paras 3-6 or Mr. Dhotries' above note as slightly amended.

Id/ D.W.P.
29/10

Mr/1/5